

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) PAUL A. ROSS,)	
)	
)	
Plaintiff,)	
)	Case No. 14-cv-783-JHP-PJC
v.)	State Court No. CJ-2014-04688
)	
(1) SHAWN RASH,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Shawn Rash removes this action to the United States District Court for the Northern District of Oklahoma pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446. This action is removable because there is complete diversity of citizenship between Plaintiff Paul A. Ross (“Plaintiff”) and Mr. Rash, and because the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00, as shown on the face of the Petition. In support of this Notice of Removal, Mr. Rash states as follows:

Procedural History

1. On December 9, 2014, Plaintiff filed a Petition (the “Petition”) against Mr. Rash commencing the civil action styled *Paul A. Ross v. Shawn Rash*, Case No. CJ-2014-04688, District Court of Tulsa County, State of Oklahoma (the “State Court Action”).

2. The Return of Service filed in the State Court Action shows that service was effected on Mr. Rash by Certified Mail on December 13, 2014. Mr. Rash has thus filed this notice of removal within the 30-day period provided by 28 U.S.C. § 1446(b).

3. Pursuant to 28 U.S.C. § 1446(a) and Local Rule LCvR 81.2, Mr. Rash has attached as exhibits to this Notice of Removal true and legible copies of all documents filed or

served in the State Court Action. A copy of the Docket Sheet from the State Court Action is attached as Exhibit 1. A copy of the Petition is attached as Exhibit 2. A copy of the Entry of Appearance for Plaintiff's counsel is attached as Exhibit 3. A copy of the Proof of Service is attached as Exhibit 4. Mr. Rash will also file a Status Report on Removed Action in compliance with the Local Rule.

4. As of the time of filing this Notice of Removal, there have been no other filings or proceedings in the State Court except those attached as Exhibits 2-4.

Amount in Controversy

5. As shown on the face of the Petition, the amount in controversy exceeds \$75,000 (exclusive of interest and costs). (*See* Ex. 2 at ¶ 31 (“As a result of Defendants’ [sic] false statements, Plaintiff has been damaged in an amount in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.”).)

Diversity of Citizenship

6. Mr. Rash is a citizen and resident of the State of Texas, as stated on the face of the Petition. (Ex. 2 at ¶ 2.)

7. Plaintiff is a citizen and resident of the State of Oklahoma, as stated on the face of the Petition. (Ex. 2 at ¶ 1.)

8. Therefore, there is complete diversity of citizenship between Plaintiff and Defendant in accordance with 28 U.S.C. § 1332.

Conclusion

9. This is a civil action over which this Court has original subject matter jurisdiction pursuant to the provisions of 28 U.S.C. § 1332. Furthermore, this action is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441 in that it is a

civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. Venue is appropriate in this Court as this Court is in the district in which the underlying state court action was pending. 28 U.S.C. § 1441.

11. Pursuant to 28 U.S.C. § 1446(d), Mr. Rash will promptly provide Plaintiff with written notice of removal of this action and will file a copy of this Notice of Removal with the Clerk of the Tulsa County District Court.

12. Therefore, under the applicable provisions of 28 U.S.C. §§ 1332, 1441 and 1446, Mr. Rash has complied with all necessary requirements and is entitled to remove this action.

WHEREFORE, Mr. Rash hereby removes all claims in the Action from the District Court for Tulsa County, Oklahoma, to the United States District Court for the Northern District of Oklahoma.

Dated: December 31, 2015

Respectfully submitted,

s/Barbara M. Moschovidis

James M. Sturdivant, OBA No. 8723

Barbara M. Moschovidis, OBA No. 31161

GABLEGOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, Oklahoma 74103

(918) 595-4800

(918) 595-4990 (Fax)

Attorneys for Defendant Shawn Rash

CERTIFICATE OF SERVICE

I certify that on December 31, 2015, I mailed a copy of the Notice of Removal, postage prepaid, to the following counsel of record:

Thomas L. Vogt
Patrick G. Colvin
Jones, Gotcher & Bogan, P.C.
15 East 5th Street, Suite 3800
Tulsa, Oklahoma 74103

I further certify that a copy of the Notice of Removal was also delivered for filing on the same date to the Clerk of the District Court of Tulsa County, State of Oklahoma.

s/Barbara M. Moschovidis

Barbara M. Moschovidis

EXHIBIT

1



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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

PAUL A ROSS, Plaintiff, v. SHAWN RASH, Defendant.	No. CJ-2014-4688 (Civil relief more than \$10,000: BREACH OF AGREEMENT - CONTRACT) Filed: 12/09/2014 Judge: Sellers, Jefferson D.
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Parties

RASH, SHAWN , Defendant
ROSS, PAUL A , Plaintiff

Attorneys

Attorney

COLVIN, PATRICK G(Bar # 31519)
15 E 5TH ST STE 3800
TULSA, OK 74103

Vogt, Thomas Lane(Bar # 10995)
Joens, Givens, Gotcher & Bogan
15 East 5th Street
Suite 3800
Tulsa, OK 74103

Represented Parties

ROSS, PAUL A

ROSS, PAUL A

Events

Event	Party	Docket	Reporter
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Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1.

Issue: BREACH OF AGREEMENT - CONTRACT (CONTRACT)
Filed by: ROSS, PAUL A
Filed Date: 12/09/2014


Party Name:

Disposition Information:

Defendant: RASH, SHAWN Pending.

Docket

Date	Code	Count	Party	Serial #	Entry Date		
12-09-2014	TEXT	1		92204903	Dec 9 2014 3:58:45:490PM	-	\$ 0.00
	CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.						
12-09-2014	CONTRACT	-		92204906	Dec 9 2014 3:58:45:960PM	Realized	\$ 0.00
	BREACH OF AGREEMENT - CONTRACT						
12-09-2014	DMFE	-		92204907	Dec 9 2014 3:58:46:030PM	Realized	\$ 2.00
	DISPUTE MEDIATION FEE(\$ 2.00)						
12-09-2014	PFE1	-		92204908	Dec 9 2014 4:04:05:340PM	Realized	\$ 163.00
	PETITION(\$ 163.00)						
	 Document Available (#1027830834)						
12-09-2014	PFE7	-		92204909	Dec 9 2014 3:58:46:030PM	Realized	\$ 6.00
	LAW LIBRARY FEE(\$ 6.00)						
12-09-2014	OCISR	-		92204910	Dec 9 2014 3:58:46:030PM	Realized	\$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
12-09-2014	CCADMIN02	-		92204911	Dec 9 2014 3:58:46:030PM	Realized	\$ 0.20
	COURT CLERK ADMINISTRATIVE FEE ON \$2 COLLECTIONS(\$ 0.20)						
12-09-2014	OCJC	-		92204912	Dec 9 2014 3:58:46:030PM	Realized	\$ 2.00
	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 2.00)						
12-09-2014	OCASA	-		92204913	Dec 9 2014 3:58:46:030PM	Realized	\$ 5.00
	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)						
12-09-2014	CCADMIN04	-		92204914	Dec 9 2014 3:58:46:030PM	Realized	\$ 0.50
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)						
12-09-2014	LTF	-		92204915	Dec 9 2014 3:58:46:750PM	Realized	\$ 10.00
	LENGTHY TRIAL FUND(\$ 10.00)						
12-09-2014	SMF	-		92204916	Dec 9 2014 3:58:46:920PM	Realized	\$ 5.00
	SUMMONS FEE (CLERKS FEE)(\$ 5.00)						
12-09-2014	SMIMA	-		92204917	Dec 9 2014 3:58:47:110PM	Realized	\$ 0.00
	SUMMONS ISSUED - MAILED BY ATTORNEY						
12-09-2014	EAA	-	ROSS, PAUL A	92211169	Dec 10 2014 11:14:09:000AM	-	\$ 0.00
	ENTRY OF APPEARANCE/ THOMAS L VOGT AND PATRICK G COLVIN ENTERING AS COUNSEL / CERTIFICATE OF MAILING						
	 Document Available (#1028045195)						
12-09-2014	TEXT	-		92204905	Dec 9 2014 3:58:45:790PM	-	\$ 0.00
	OCIS HAS AUTOMATICALLY ASSIGNED JUDGE SELLERS, JEFFERSON D. TO THIS CASE.						

Date	Code	Count	Party	Serial #	Entry Date	
12-09-2014	ACCOUNT	-		92204934	Dec 9 2014 3:59:47:610PM	\$ 0.00
RECEIPT # 2014-2988400 ON 12/09/2014. PAYOR: JONES GOTCHER TOTAL AMOUNT PAID: \$218.70. LINE ITEMS: CJ-2014-4688: \$168.00 ON AC01 CLERK FEES. CJ-2014-4688: \$6.00 ON AC23 LAW LIBRARY FEE. CJ-2014-4688: \$0.70 ON AC31 COURT CLERK REVOLVING FUND. CJ-2014-4688: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES. CJ-2014-4688: \$2.00 ON AC59 OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND. CJ-2014-4688: \$2.00 ON AC64 DISPUTE MEDIATION FEES. CJ-2014-4688: \$25.00 ON AC79 OCIS REVOLVING FUND. CJ-2014-4688: \$10.00 ON AC81 LENGTHY TRIAL FUND.						
12-15-2014	S	-	RASH, SHAWN	92271827	Dec 16 2014 11:27:31:830AM	\$ 0.00
PARTY HAS BEEN SUCCESSFULLY SERVED. FOR SHAWN RASH / BY CERT MAIL, SIGNED SHAWN RASH / 12-13-14  Document Available (#1028048986)						

Report Generated by The Oklahoma Court Information System at December 30, 2014 11:40 AM

End of Transmission.

EXHIBIT

2



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

PAUL A. ROSS,

Plaintiff,

v.

SHAWN RASH,

Defendant.

Case No.

DISTRICT COURT
FILED

DEC - 9 2014

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

CJ-2014 04688

PETITION

JEFFERSON D. SELLERS

COMES NOW the Plaintiff Paul A. Ross ("Plaintiff"), through his counsel of record, Thomas L. Vogt and Patrick G. Colvin of the law firm Jones, Gotcher & Bogan, P.C., and for his Petition against Defendant Shawn Rash ("Defendant"), alleges and states as follows:

JURISDICTION AND VENUE

1. Plaintiff is a resident of Tulsa County, Oklahoma.
2. Upon information and belief, Defendant is a resident of Gillespie County, Texas.
3. The acts which give rise to this action occurred in Tulsa County, Oklahoma.
4. Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

5. Plaintiff served as Chief Executive Officer ("CEO") of Acumen Energy Solutions, Inc. (hereinafter "AES") (f/k/a American Energy Solutions, Inc.) from March 2011 through June 2014. Plaintiff served as the Chairman of AES from March 2011 through October 2013.

6. At all times relevant hereto, Defendant was the President of AES.

7. AES provides a comprehensive suite of professional energy management services tailored to owners/operators of commercial, industrial, and institutional facilities.

8. The client list of AES includes, but is not limited to, Acme Brick, CAT logistics, FedEx, Albertsons, St. Luke's Healthcare System, Omni Hotels, and Johns Manville.

9. Plaintiff developed significant relationships with these clients during his tenure as the Chairman and CEO of AES.

10. Plaintiff's relationships have significant value because they allow for future business opportunities in the energy management services industry.

11. AES is wholly owned by Palo Verde Private Equity Fund, L.P. (the "Fund"), which is currently in receivership proceedings in Maricopa County, Arizona.

12. Since October 9, 2013, Peter S. Davis of Simon Consulting, LLC has served as the Receiver for the Fund and its assets.

13. On May 14, 2014, Plaintiff loaned Defendant \$7,108.20.

14. Defendant has failed and refused to repay Plaintiff for the loan.

15. Throughout the 2014 calendar year, Defendant falsely stated to the Receiver of the Fund, the General Manager of Precision-Paragon, and various executives at Johns Manville that Plaintiff misappropriated funds of AES.

16. On or around June 30, 2014, Peter S. Davis terminated Plaintiff as the CEO of AES because of Defendant's false statement.

17. Defendant is currently the President of Ally Energy Solutions, Inc., which provides substantially similar services as AES.

18. Defendant continues to make false statements about Plaintiff, e.g., "Plaintiff mismanaged AES," to former business partners of AES including, but not limited to, Precision-Paragon.

19. Defendant has also continued to make these false statements to former clients of AES including, but not limited to, Johns Manville.

20. Defendant's false statements have significantly damaged Plaintiff's reputation in the energy management services business.

21. Defendant's statements are false, unprivileged, and have directly injured Plaintiff in respect to his business by imputing general disqualification in those respects which Plaintiff's occupation peculiarly requires and by imputing something with reference to his business that has a natural tendency to lessen its profit.

FIRST CAUSE OF ACTION
Breach of Contract

22. Plaintiff incorporates paragraphs 1 – 21 as if fully set forth herein.

23. There was a valid and enforceable contract between Defendant and Plaintiff, wherein Plaintiff agreed to loan \$7,108.20 to Defendant and Defendant agreed to repay same to Plaintiff.

24. Defendant breached the contract by failing to repay any of the \$7,108.20.

25. Defendant's breach has damaged the Plaintiff in the amount of \$7,108.20.

SECOND CAUSE OF ACTION
Slander

26. Plaintiff incorporates paragraphs 1 – 21 as if fully set forth herein.

27. Throughout the 2014 calendar year, Defendant falsely stated to the Receiver of the Fund, the General Manager of Precision-Paragon, and various executives at Johns Manville that Plaintiff misappropriated funds of AES.

28. Defendant continues to make false statements about Plaintiff, e.g., "Plaintiff mismanaged AES," to former business partners of AES including, but not limited to, Precision-Paragon.

29. Defendant has also continued to make these false statements to former clients of AES including, but not limited to, Johns Manville.

30. These statements are false, unprivileged, and have directly injured Plaintiff in respect to his business by imputing general disqualification in those respects which Plaintiff's occupation peculiarly requires and by imputing something with reference to his business that has a natural tendency to lessen its profit.

31. As a result of Defendants' false statements, Plaintiff has been damaged in an amount in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.

32. Defendant is also liable for Category II punitive damages because he has acted intentionally and with malice towards Plaintiff. Accordingly, he is liable for punitive damages in an amount not to exceed the greatest of:

- a. Five Hundred Thousand Dollars (\$500,000);
- b. twice the amount of actual damages awarded; or
- c. the increased financial benefit derived by the defendant as a direct result of the conduct causing the injury to the plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this court enter judgment in his favor and against Defendant, award Plaintiff actual damages in an amount in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, award Plaintiff exemplary damages in an amount to be determined at trial, award Plaintiff his attorney's fees and costs, and grant any additional relief this Court deems just and equitable.

By: Patrick G. Colvin

Thomas L. Vogt, OBA 10995

Patrick G. Colvin, OBA 31519

Jones, Gotcher & Bogan, P.C.

15 East 5th Street, Ste. 3800

Tulsa, OK 74103-4309

tvogt@jonesgotcher.com

pcolvin@jonesgotcher.com

Attorneys for Plaintiff Paul A. Ross

EXHIBIT

3



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

PAUL A. ROSS,

Plaintiff,

v.

SHAWN RASH,

Defendant.

DISTRICT COURT
FILED

DEC - 9 2014

Case No.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

CJ-2014 04688

JEFFERSON D. SELLERS

ENTRY OF APPEARANCE

COME NOW Thomas L. Vogt and Patrick G. Colvin, of the law firm of Jones, Gotcher & Bogan, P.C., and enters their appearance as counsels of record on behalf of Plaintiff, Paul A. Ross, in the above-styled and numbered matter.

Respectfully submitted,

Patrick G. Colvin

Thomas L. Vogt, OBA# 10995
Patrick G. Colvin, OBA# 31519
JONES, GOTCHER & BOGAN, P.C.
15 East Fifth Street, Suite 3800
Tulsa, Oklahoma 74103
Telephone: (918)581-8200
Facsimile: (918)583-1189
Attorneys for Plaintiff

SALLY HOWE SMITH
COURT CLERK

2014 DEC - 9 PM 4:01

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of December, 2014, I caused a true and correct copy of the above and foregoing Entry of Appearance, to be mailed in the U.S. Mail, with postage fully prepaid thereon, to:

Shawn Rash
2156 Hedgestone
Fredericksburg, TX 78624

Patrick G. Colvin
Patrick G. Colvin

EXHIBIT

4

PAUL A. ROSS,

Plaintiffs,

vs.

SHAWN RASH,

Defendants.

Case No. **CJ-2014-04688**

Attorneys for Plaintiff:

Thomas L. Vogt, OBA# 10995

Patrick G. Colvin, OBA #31519

Jones, Gotcher & Bogan, P.C.

3800 First Place Tower

15 East Fifth Street

Tulsa, Oklahoma 74103-4309

4688

TO THE NAMED DEFENDANT:

SHAWN RASH

2156 Hedgestone

Fredericksburg, TX 78624

DISTRICT COURT
FILED

DEC 15 2014

Appointed to serve.

PSL#

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Authorized by

You have been sued by the above named plaintiff(s) and you are directed to file a written answer to the attached petition and order in the Court at the above address within twenty (20) days after service of this Summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of this action.

Issued this _____ day of December 2014.

TULSA COUNTY COURT CLERK

(Seal)

By _____, Deputy Court Clerk

This Summons and Order was personally served on _____
(date of service)

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

Return ORIGINAL for filing.

D

Plaintiffs,

vs.

SHAWN RASH,

Defendants.

)
) Attorney for Plaintiff:
) Thomas L. Vogt, OBA# 10995
) Patrick G. Colvin, OBA #31519
) Jones, Gotcher & Bogan, P.C.
) 3800 First Place Tower
) 15 East Fifth Street
) Tulsa, Oklahoma 74103-4309

PERSONAL SERVICE

I certify that I received the foregoing summons the ____ day of _____, 2014, and that I delivered a copy of said summons with a copy of the petition and order attached to each of the following defendants personally in _____ County at the address and on the date set forth opposite each name, to wit:

<u>Defendant</u>	<u>Address</u>	<u>Date Received</u>

USUAL PLACE OF RESIDENCE

I certify that I received the foregoing summons on the ____ day of _____, 2009, and that on _____, I served by _____ leaving a copy of said summons with a copy of the petition and order attached at _____, which is his dwelling house or usual place of abode, with _____, a person then residing therein, who is fifteen (15) years of age or older.

CORPORATION RETURN

Received this summons this ____ day of _____, 2009, and as commanded therein, I summoned the within named defendant, as follows, to wit: _____ a corporation, on the ____ day of _____, 2009, by delivering a true and correct copy of the within summons hereof with endorsements thereon and a copy of the petition to _____ he being the ____ of said corporation, and the _____, President, Vice-President, Secretary, Treasurer, or other chief officer not being found in said County.

NOT FOUND

Received this summons this ____ day of _____, 2009. I certify that the following persons of the defendant(s) within named _____ not _____ found _____ in _____ said _____ County:

FEES

Fee for service \$ _____, Mileage \$ _____, Total \$ _____

Dated this ____ day of _____, 2014.

Sheriff

By: _____
Deputy-Tulsa County, Oklahoma

By:

Process Server-Tulsa County, Oklahoma

AFFIDAVIT

I, _____, the undersigned, under oath, do say that I served this summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

Process Server

Subscribed to and sworn to before me this ____ day of _____, 2014.
Sally Howe Smith, Court Clerk

My Commission: _____

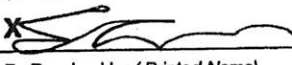
Deputy Court Clerk or Notary Public

Defendant	Address Where Served	Date Received
SHAWN RASH	2156 Hedgestone Fredericksburg, TX 78264	12/13/2014

Patricia G. Aubin
Signature of person mailing summons

7013 1710 0001 3064 2347

U.S. Postal Service CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	12/9/14 Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To <u>Shawn Rash</u>	
Street, Apt. No., or PO Box No. <u>2156 Hedgestone</u>	
City, State, ZIP+4 <u>Fredericksburg, TX 78624</u>	
PS Form 3800, August 2006 See Reverse for Instructions	

SENDER: CC		DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <u>Shawn Rash</u> <u>2156 Hedgestone</u> <u>Fredericksburg, TX</u> <u>78624</u>		B. Received by (Printed Name) <u>Shawn Rash</u>	
		C. Date of Delivery <u>12-13-14</u>	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7013 1710 0001 3064 2347	
PS Form 3811, February 2004		Domestic Return Receipt 100005-02-M-1540	